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A Mirror for Courts-Martial:

IN WHICH THE

COMPLAINTS, TRIAL,
SENTENCE AND PUNISHMENT

OF

DAVID BLAKENEY,

ARE

Represented and Examined with Candor.

THE SECOND EDITION.

By C. LUCAS, M. D.

A Citizen of DUBLIN in PARLEMENT.

——— Innocence shall make
False accusation blush, and Tyranny
Tremble at patience.———

SHAKESPEAR.

D U B L I N :

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THE BRITISH MUSEUM
NATURAL HISTORY

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THE SECOND EDITION.

BY C. D. C. A. S. M. P.

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INTRODUCTION.

IN a Free State, like this, every man is answerable for his conduct, in his public character. I am ever ready to submit mine to the strictest scrutiny, and flatter myself, it will be found to bear the severest test.

It is observed by some, with an evil eye, that I bustled myself greatly in a particular instance, in matters, with which, it is said, I had no sort of concern. That I solicited for the pardon of an infamous offender, in the military too, a department, quite out of my sphere; and that I made several motions in the House of Commons, in favor of such a delinquent, unbecoming the dignity of my station.

In common justice to the unfortunate man, whose pardon I solicited, as well as to mine own character, it is made necessary to explain the case, and the tenor of my proceeding thereupon.

In this, it will be found, that I had no particular regard to the individual, that I never knew, or heard of him, or even of his trial, till after he was led to execution, and by unheard of inhumanity, provoked into such a pitch of madness, as to drive him, in his frenzy, to lay violent hands upon himself.

A good Citizen cannot look with indifference upon the disasters of his fellow subjects. He must feel for the adversities and wrongs of his neighbours. And like the good *Samaritan*, he must ever be ready to pour the healing balm into the wounds of the afflicted.

But the good Citizen goes even further than this, he feels and resents the wrongs and injuries, the bonds and the stripes, inflicted upon his innocent neighbour, and naturally seeks every just means of redress. He justly judges that *the Cause of INNOCENCE is the Cause of ALL.*

The good Legislator must go still further. Though appointed by a part, he becomes a trustee and a guardian for the whole kingdom. He can suffer or see no wrong done, without applying for a proper remedy, as speedily as possible. And while, I hope, it will be confessed, that I acted agreeable to the duties of my station; it will appear, that the person, for whose pardon I solicited, was an object of mercy, and that much evil might have been prevented, and no wrong done, by suspending the execution of that sentence, till further inquiry was made into the circumstances of the case.

Now, I am doubly called upon to state this case, in justice, first to a member of society, whom I think injured, and next in regard to mine own reputation, as a Citizen, and as a Member of Parliament.

To conclude with the poet :

Of all the virtues, JUSTICE is the best ;
 Valour without it, is a common pest :
 Pyrates and thieves, too oft with courage grac'd,
 Shew us how ill that virtue may be plac'd ;
 'Tis but complexion makes us chaste or brave :
 JUSTICE from Reason and from Heav'n we have ;
 All other virtues, dwell but in the blood ;
 That's in the soul, and gives the name of GOOD.

WALLER.

A Mirror for Courts-Martial, &c.

THE extraordinary clamour industriously raised against my conduct, with respect to the unfortunate **DAVID BLAKENEY**, a Matross of the Regiment of Artillery, calls upon me to make out my justification to the public. And, as self-defence or self-preservation is the first law of nature, those who put me under the disagreeable necessity of making this publication, must blame themselves, if bringing these matters more clearly to light can give offence; when they reflect, that all possible peaceful, merciful and just means were tried in vane, before this was, or could be, attempted.

I am fully persuaded, that some military force is necessary for this kingdom, and should wish to see an establishment, suitable to the necessities and circumstances of the nation, well regulated and strictly disciplined, constantly kept on foot, until the natives of *Ireland* become capable and qualified to defend their liberty and property, in the form of a militia.

At present, I am sensible of the use and necessity of a standing army. And though I cannot approve the present expensive establishment, nor give my consent to an augmentation of it, in any form, or upon any consideration; I hold the gentlemen of the army in general, in high honor and estimation, being perfectly sensible of the many obligations we owe their virtue and valor, notwithstanding the numberless violent outrages upon the civil power, all over the kingdom, and particularly in this capital, committed by the soldiery.

But, while I honor and esteem the officers of the army, in their stations, I can in no sense, think them infallible; and lest of all, when I consider them as judges of the lives, liberties and properties of their fellow subjects, especially of those of the inferior class, who are necessarily made subject to the absolute, not to say, despotic, command of their superiors.

To be plain, since I have been able to form any judgement of such matters, I have learned to look upon Courts Martial, with a very jealous, suspicious eye. I will not say, that these courts are not necessary, or that they have always erred: I think they are and must be necessary, while an army continues to be so. But as the best instructed, the most indifferent, and lest biased or prejudiced judges, as men, must be fallible, and do, and must often err, so gentlemen of the army, who cannot pretend to be the best instructed, the most indifferent, the lest biased, or the most unprejudiced judges in the martial courts, must be the most liable to errors in their judgements.

There is no class of men in the state, so likely to be unacquainted with the liberties and rights of the subject, or the laws on which they are founded, and by which they are fenced and secured, as the gentlemen of the army: For, though it must be confessed, there are many most accomplished men amongst them; yet, in general, they are the last, that are called upon, in the ministration of justice; they rarely read any law book, beyond the Articles of War; they are hardly ever called to attend courts of judicature, as jurors or other civil officers, and the principal requisite qualifications for their sphere, are obeying and commanding well, in their turn.

No wonder then, we find such an universal outcry against the proceedings of Courts Martial in *Great Britain*, where, it is probable, they are not the worst conducted. Let any man, who has thought of the subject, but recollect
what

what has happened within our own times, to go no further back, with respect to Courts Martial, and differ from me in judgement, if he can.

Let us overlook many of inferior note, to take a view of the conduct of the Courts Martial, who tried the Lord *George Sackville* and Admiral *Byng*. I do not pretend to enter into the merits of the cases of these officers. I shall only in general observe, that no delinquents, supposing these such, were ever brought to trial under more unhappy circumstances: They were each sentenced to death and destruction in every company, perhaps by every individual in *England*, before either of them returned home. So, that had they been allowed the challenges to their juries, which the common law authorises, it might be hard, if not impossible to find a lawful jury to try either; for both were every where, and by almost every body prejudged.

The noble lord's fate was still harder: He, was, untried, perhaps before he landed in *England*, brought to very severe punishment, a punishment, to some, worse than death. He was, by a prejudgement, stripped of all his military honors, commissions and employments. And, when by this means, he got out of the yoke of the military law, he was tried by a Court Martial, which had no more power, authority or right to try his Lordship, than to try any of the Bench of Bishops upon an imputed civil crime.

The supposed criminal was attended with this among other aggravating circumstances, that he was tried by a Court of Officers, whose tenure of their commissions stood upon the same fragil footing with that of his Lordship's, the will of their commander. That commander had already passed sentence upon his Lordship. He had an undoubted right to dismiss any soldier his service. What then was this court to try?—Nothing less, than whether the sentence of the great commander was just or not.—

Was

Was it then to be supposed likely, that a court so circumstanced, could presume to reverse the great sentence of the great commander?—Whether they were free, impartial, independent and unprejudiced judges or not, let their conduct tell. They, in effect, confirmed the sentence. Now, I contend for it, that if they had a right to try him, which I must suppose, they knew, they had not, and had the charge against him been legally proved; by the Military Law, by the Mutiny Act, sect. I. he should have been sentenced to death. And if the charge was not fully proved; by every law, he should have been acquitted.

As for *Byng*, I do not find, that he was stripped of the military rank or character, though I well remember, he was universally condemned by sea and land, before he was brought to his trial. The court judged it right to affirm the popular sentence, and so the Admiral was sentenced to be shot. But, before the execution, his judges relented and grew penitent, and petitioned parlement to be absolved from their oath of secrecy, in order to lay the motives of their proceeding before a superior court, who might mitigate or suspend a sentence, which lay so heavy on the consciences of these judges, as to have greatly disturbed the peace of the whole, and as I have heard, the understandings of some. And so this *British* Admiral was shot, as a *Frenchman* humorously expressed it, *pour encourager les autres*.

The trial of Colonel *Lambert* is recent in every body's memory: Colonel *Cary* memorialled the King for some mark of his favour, in consideration of his valour and prowess in heading and leading on the troops at *St. Cath*. Colonel *Lambert* applied for the like favor, for the like reason. The commander in chief judged the later application injurious to the honor of the former. And therefore, Colonel *Lambert* was called to a Court Martial for defaming his officer.

In this trial, the assertions and allegations of Colonel *Lambert* were clearly and incontestably proved, even by the witnesses called by Colonel *Cary*, as well as many others. It was proved that Colonel *Cary* after a certain time disappeared, and that Colonel *Lambert*, by speech and example, inspirited the men, and led them on through every danger, till he was commanded to retreat, which he did in the best order possible. Colonel *Cary* confessed the truth, apclogising, very properly, no doubt, that the wind of a cannon-shot had knocked him down, and disabled him for a considerable time.—What the sentence of this Court Martial was, has not, that I have learned, as yet appeared. But this result of it is well known; that the brave Colonel *Lambert* was kept in arrest for some weeks, put to very great expence, and that, though he incontestably proved the truth of every assertion and allegation he made, he received no mark of favor or common compensation; while Colonel *Cary* was made as he desired, an Aid du Camp to his Majesty, which must be presumed to have been done upon the representation of the Court Martial.

If I were to recount the instances, where the courts of law have interposed, censured and corrected Courts Martial, or given their victims costs and exemplary damages against them, I know not where I should end. I shall only mention one or two examples more, which may suffice.

A soldier of the Royal *British* Volunteers, finding himself hardly used by one of his officers, consulted a neighbouring lawyer for relief. The officer hearing this, was further incensed, commanded the soldier to attend at his lodgings, which he did for several days successively, at the hours appointed, at which hours, the officer was from home. Nevertheless, he charged the soldier with disobedience to orders, had him tried by a Court Martial, and sentenced to receive several hundred lashes, which he saw inflicted,

inflicted, apparently with as much pleasure, as the wretched soldier suffered pain.

The lawyer did not suffer it to end here: He brought an action against the officers that composed the Court Martial, and they were fined several hundred pounds. I cannot concele this, though mine own son had the misfortune to be concerned, to be president, though under age.

The sentence of a Court Martial upon lieutenant *Fry*, at *Jamaica*, in the year 1740, is too remarkable to be forgot by any, who read it. The crime charged against *Fry* was no less than mutiny. But his defence was, that he did not refuse to obey orders, but declined obeying till he should have received a written order from his commander. However, he was kept in close confinement for fourteen months, deprived of the comfort of seeing his friends, of the use of pen, ink and paper, and so cruelly treated, that he fell into very severe distressful disorders.

At length, he was brought to his trial. The witnesses produced against him, were mean, ignorant and illiterate people, quite unknown to *Fry*, whose depositions were taken down in writing, several days before the trial. He therefore objected to their evidence; but was answered with brow-beating, over-ruling, cursing and swearing, and other insolence. And, upon the whole, he was found guilty, and sentenced to be imprisoned for fifteen years.

After this, he was brought into *England*, and committed to the marshalsea. This gave him an opportunity of petitioning the king, whose royal clemency opened the royal ear and the fountane of mercy, to the grievous complaints of his worthy soldier oppressed. Upon the council's report of the unfortunate sufferer's hardships, the king pardoned him and restored him to his rank.

This

This gave him an opportunity of bringing his tyrants before a *British* civil tribunal. He brought an action of false imprisonment against sir *Chaloner Ogle*, president of the court-martial, before the lord chief justice *Willes*, in the court of common pleas, and obtained a verdict for one thousand pounds damages, against *Ogle*, and liberty to bring actions against all and each of the other officers, who composed the Court Martial.

Accordingly, the same worthy lord chief justice, issued his writs, for arresting *Perry Mayne*, esq; and captain *Rantone*, being members of *Fry's* Court Martial at *Jamaica*, though they were then engaged in a Court Martial, which sat at *Deptford*, on the trial of admiral *Lestock*, of which court, *Mayne* was president.

Upon this *Mayne* was arrested, when the Court Martial was up. Whereupon the court, in high wrath and indignation, the next day entered into a set of the most violent, insolent and abusive resolutions, asserting the prerogative and powers of their court, and casting many insolent reflections upon the lord chief justice and court of common pleas.

But the spirited chief justice was not to be frightened out of a sense or discharge of his duty. Therefore, he asserted the authority of the civil power, by attaching the whole Court Martial, till he brought them to a sorrowful sense of their insolence and delinquency, and then pardoned them upon their making the following humiliating, mortifying submission and recantation.

“As nothing is more becoming a gentleman than to acknowledge himself in the wrong, as soon as he is sensible that he is so, and to be ready to make satisfaction to any person he has injured. We therefore, whose names are underwritten, being thoroughly convinced that we were intirely mistaken, in the opinion we had conceived
of

of the lord chief justice *Willes*, think ourselves obliged in honor, as well as justice, to make him satisfaction, as far as it is in our power. And as the injury we did him was of a public nature, we do in this public manner declare, that we are now satisfied, the reflections cast upon him in our resolutions of the 16th and 21st of *May* last, were unjust, unwarrantable, and without any foundation whatsoever. And do ask pardon of his lordship and the court of common pleas, for the indignity offered both to him and the court. Nov. 10, 1746. Signed by admirals *Mayne*, *Byng* and others to the number of seventeen.

These few instances, out of many more, which might be given, shew that Courts Martial have often exceeded the bounds of law, and violated the principles of justice and humanity. Which makes it most necessary to hold a watchful eye upon their conduct, and to restrain them within the bounds of justice and moderation.

This recantation, as a humiliation of this, and a warning to all future Courts Martial, was ordered to be recorded in the remembrancer's office, and published in the *London* gazette.

The very law, which gives the power to officers to hold Courts Martial, and which makes soldiers the onely class of men, who are deprived of the sacred privilege of being tried by their peers, encourages the soldiers to make complaints occasionally, and leaves them room to bring bills, plaints and actions against their judges, in the superior courts; by which, it appears, the legislature did not judge officers or Courts Martial infallible.

The *British* act of parlement, of the seventh of his present majesty, for punishing mutiny and desertion, &c. and I have not yet seen the *Irish*, inacts "that if any paymaster, agent or other officer, having received the soldier's pay, when it shall become due, according to the rates

rates therein mentioned, upon proof before a Court Martial, he shall be discharged from his employment, and forfeit, upon conviction, one hundred pounds, and the informer, if a soldier, shall, upon demand, be discharged." see Sect. xxi; and that actions, suits, plaints, and suits may be brought against any person for acts, matters, or things done in pursuance of the act, or against any member or minister of a Court Martial, in respect of any sentence of such court, or of any thing done by virtue, or in pursuance of such sentence, appears by Sect. lxiii, lxiv.

But this does not argue a particular diffidence in Courts Martial: The wisdom of our laws has ordained a like watchful eye to be held over all the common law courts, and even the sacred fundamental institution of juries. And every inferior court is answerable for its conduct to some superior, and all, to the high Court of Parliament.

If then, the conduct of courts, wherein the lives, liberties and properties of the subject are to be tried by the verdict of twelve men of their own rank, allowing certain challenges and exceptions, to certain numbers of the panel peremptorily, and to as many more as reasonable cause of exception can be shewn, may by law be excepted against and arraigned; how much more reasonable and necessary is it to hold a watchful eye on the conduct of Courts Martial, in which Officers are often the prosecutors and judges of those Soldiers, who are so much their inferiors, that it is held not unlawful or unjust for an Officer to kick, cuff or cudgel a Soldier, while the soldier is punishable with Death, that resists or raises his hand against his superior officer? Where the Soldier has no challenge to any of the Judges, though his bitterest enemy were of the number? And where his Judges, thus circumstanced, are the executioners of their own sentence?

While I have the honor of a Seat in the Legislature, I shall think it my duty to give the best attention I can,

to those matters, in order to use my best means to procure an amendment of the martial laws.

From these considerations, and from the common sensations of humanity, it was impossible for me to hear the melancholy story of BLAKENEY, the Matross, without emotion.

The reports, which shocked my ears, with those of the public, were, that a Matross, for complaining of grievances and hardships, instead of receiving redress, was himself punished for complaining, ordered to receive five hundred lashes, from a number of the most able bodied drummers in the barracks, by that very court, wherein he appeared as a prosecutor, not as a delinquent. That, at the place of execution, grown frantic with his distresses, and repeted insolence and cruelty, he stabbed himself, and was sent to the royal Infirmary.

However confident I might have been in the honor and humanity of the officers of the army in general, I judged this story demanded attention, and I straitway resolved to inquire and learn the truth.

I was informed that the private men of the Royal Regiment of Artillery had long laboured under heavy oppressions, with respect to excessive deductions and stoppages out of their subsistence, for supernumerary cloaths, and other matters, agreeable to the fancies of their officers, but quite contrary to the law, which ascertains the full pay, the stoppages for necessary cloathing, &c. and the actual subsistence of soldiers, and makes it penal in any officer to detain or withhold any part of their pay, upon any pretence whatsoever, without the express direction of his Majesty, under his royal sign manual.

To avoid the penalty of mutiny, which must follow the complaint of a number of the men, they unanimously pitched

pitched upon DAVID BLAKENEY, a Matross, to make the complaint in his own name, which he readily undertook, conscious of truth and his own innocence.

With all becoming respect and deference, he often remonstrated upon these grievances, to his officers; but without any redress. At length, the complaints were made to the commanding officer, but to little better purpose, one or two of the slightest grievances onely, being redressed. And this giving no satisfaction, it became necessary to summon a Regimental Court Martial, before which BLAKENEY was ordered to bring his complaints.

It is observable, that this court, which was appointed to determine the property and rights of a soldier, was not sworn. It was therefore objected to by the Complainant, but to no effect; his objection was over-ruled, and they proceeded to judgement.

It was apprehended, that if the court was not legally qualified, it could have no competent jurisdiction, and therefore, could serve for no better purpose, than to disclose the nature and form of the complaints, and the evidence to support them, and so leave the Complainant farther from redress than ever.

BLAKENEY, unable to contend with his officers, was forced to give up his exceptions to their not being sworn, and in obedience to their orders, gave in his complaints to the number and effect following:

I. That though by the Marquess of *Kildare's* recruiting advertisement, under which he listed, the subsistence of a Matross was fixed at five shillings and six-pence half-penny the week, this Complainant never received more than five shillings and six-pence a week.

II. That

II. That upon his entering the regiment, instead of the full cloathing appointed by his Majesty, this Complainant got but an old, bad coat, and in some time after, a new waist-coat and breeches, for which breeches, he was forced to pay six shillings and six-pence, by two shillings a week, stopped out of his subsistence.

III. That though his Majesty, of his royal bounty, has ordered, that each soldier, with his annual cloathing, should receive, as what is called Half-mounting, one shirt, one pair of stockings, one pair of shoes, and cloath for gaytres, roller or neck-cloath, in lieu of which, ten shillings in money is ordinarily allowed by the Board, under the denomination of half-mounting money; this Complainant received no half-mounting, nor value for it, until he was a year in the regiment, though furnished with the shabby cloathing first mentioned, and afterwards with full cloathing, and then he received but five shillings, which is but half the allowance.

IV. That of an annual allowance, called utensil-money, he received none, though he was near three years in the service, until he was confined by the Regimental Court Martial, and then, by way of hush-money, he was paid for one year. Of this more hereafter.

V. That in the year 1765, he was charged one pound three shillings and nine-pence; and in the year 1766, thirteen shillings and six-pence, for two pair of leathern breeches, and for the payment of these sums, he was laid under stoppages of two shillings a week, out of his subsistence.

VI. That though there is a certain deduction made out of every soldier's pay for the hospital and infirmary, this Complainant was laid under the additional stoppage of one half-penny per week, out of his subsistence from *May 1765*, to *July 1766*, which was said to be for the use of the infirmary.

VII. That

VII. That the stoppage of one half-penny per month was made out of his subsistence, which was said to be for the cleaning the Necessary Office. This, I find, was afterwards given up.

VIII. That while he had one plane and one laced hat in use, and a new laced hat in the stores, he was forced to pay for a fourth, a very small, coarse Felt, two shillings, and for setting to tie it, two-pence.

IX. That though the cloathing is ascertained by his Majesty's order, and deductions, more than sufficient, made for it out of the established pay, the Complainant and other private men, were put under stoppages, out of their subsistence, for a buff-colored, supernumerary waist-coat, when the King's order for cloathing required the old coat to be made into a waist-coat, and the making paid for by the board. But this article, the General Court Martial, in their sentence, declare to be a grievance, as will hereafter appear; while the Complainant, for the sole crime of complaining, according to law, is ordered to receive five hundred lashes of a Cat-of-nine-Tails, how agreeable to law, let the just and dispassionate judge.

X. That while he had a suit of cloaths in wearing, and a new coat, due in *August*, by the King's order, in the stores, which had been but a day or two worn, he was put under stoppages, out of his subsistence, for the payment of one pound and nine-pence, for a frock, regardless of his Majesty's cloathing order, and that which expressly forbids all stoppages, not warranted by his sign manual.

XI. That the cloathing, which became due in *August*, was not permitted to be worn above two days, when they were taken from the men, and locked up in the stores, where they have been ever since kept from the Complainant, and the rest of the men.

B

XII.

XII. That a deduction of one farthing a week, out of his subsistence, has been often made, for the carriage of his pay to *Chappel-Izod*. The deduction of a farthing a month out of each private man's pay, for this purpose, was confessed by the adjutant on the floor of the House of Commons.

XIII. That there are twenty-five men of the regiment, mustered, as soldiers, who never do any part of the duty of soldiers; that one of these mustered men, namely, *John Robinson*, never did any part of the duty of a soldier, or even ever appeared in regimentals, being but a boy, in no sort qualified to be enlisted, or for service; that another of these mustered men, namely, *William Connell*, never did any part of a soldier's duty, or even ever appeared at muster, in three years: and that many of them wear liveries and act as servants, not as soldiers.

Now, supposing these complaints well founded, what punishment is due to the offender or offenders? And what redress to the Complainant, according to law?

The act for punishing mutiny and desertion, of the seventh of his present Majesty, sect. XXI. ascertains the pay of the private men, in the different corps, distinguishing their actual subsistence to be paid weekly, without deduction, and certain allowances for other necessaries, to be accounted for once in two months; and the stopping, detaining or withholding such pay, when due, subjects the pay-master, clerk, agent or officer, so offending, to the penalty of one hundred pounds, and intitles the soldier informing or complaining, to his discharge, if he desires it. And by sect. xxii. agents acting contrary to the intent of this act, or disobeying or neglecting such orders, as are or shall from time to time, be given by his Majesty, under his sign manual, shall be discharged from their offices, and utterly disabled from holding any such office under his Majesty.

Now

Now, his Majesty, under his sign manual, has directed and ascertained the cloathing, as well as the pay of his soldiers. All stoppages of that pay, or alteration in that cloathing, subjects the officer or officers making them, to the penalties of this act. The alterations in the cloathing, and the stoppages made in the pay of the complaining Matros, and the other private men of that corps, are not attempted to be denied, but are in general confessed, without any authority for so doing, under his Majesty's sign manual. The General Court Martial, in their sentence, admit the article of the buff-coloured waist-coat to be a Grievance, in the strongest terms, to wit, "The court finds, that with respect to the seventh article of the charge, the stoppage made from the Complainant, on the said article, was a Grievance, as being unnecessary; the cloathing of the Royal Regiment of Artillery being ascertained by his Majesty, and thought to be sufficient." We shall hereafter see how the court has thought fit to construe away this acknowledged and adjudged Grievance, as well as to change the number of the articles. If this and other confessions of stoppages and alterations of pay and cloathing, want further proof, let it be remembered, that it was proved by the adjutant of the regiment, on the floor of the House of Commons, that the whole corps were under stoppages of two shillings a week, out of their subsistence, part of it for carrying their pay to *Chappel-Izod*. Hence, it is easy to judge, whether or not justice is done to this corps in general, to their Complainant in particular. Whether their commander has transgressed the law and the orders of his Sovereigne, and whether the complaint can be judged *vexatious or groundless*, which alone can bring the Complainant or Apellant under the censure of the Court-Martial, according to the xiiith section of the Articles of War.

But, the number of the articles in the charge, and those in the sentence of the Court-Martial do not correspond. How is this to be reconciled?—To me, it appears, that

one or two of the articles of complaint, exhibited in the Regimental Court Martial, were suppressed and not admitted to come before the General Court Martial.

For, as I am informed, when the commanding officer gave the Complainant no redress, and he resolutely, yet respectfully, insisted upon his complaints being judged by a Regimental Court Martial; the adjutant, on the morning this court sat, put some money into the Complainant's hand, in lieu of the farthings, stopped for the unheeded of carriage of his pay. And though this was and should have been taken as a confession of guilt, and the strongest proof that could be given of the truth of the complaint; yet this article was struck out of the charge, and not admitted to come before the court, but new modelled as the judges thought fit, regardless of the soldier's unquestionable right to make this an article of his complaint, before both the Regimental and the General Court Martial. And sure this charge alone, thus confessed, could have left no room to censure the complaint, *as vexatious and groundless*. It is hence observable, how unfortunate the Complainant, or any other soldier in his circumstances must be, when his complaints, his property and his liberty, are tried by, and lie at the mercy of, a set of interested, sometimes angry and incensed gentlemen, who are without the lawful and necessary bond of security, of an oath, to be the judges. At best, it serves no better a purpose than to open the complaint, to discover and weaken, or perhaps remove the evidence, and to discourage and intimidate the Complainant. This seems to have been the case here: The charges in general were not, as I am well informed, denied; they were justified, as tending to the good of the service, and therefore demanding submission and obedience, instead of redress. And accordingly, when the complaints were thus modified, the judges sat. And without pronouncing any sentence, yet made known to the Complainant or any other of his rank in the corps, he was committed a close prisoner to the guard-house, and there kept some days.

This

This was all that transpired of the judgement of this Court Martial, which, as not sworn, could onely be considered as a court of inquiry, to examine the truth and foundation of the complaints, but having no sort of legal power or authority to punish the foldier for complaining.—Let men of law judge whether this was or was not in the whole, an unjust and unwarrantable proceeding, and whether the imprisonment was not arbitrary and illegal, and subject to the penalties of false imprisonment.

But this, I am informed, was not the onely article struck out of the charge and not permitted to be regularly tried in the appeal: For, while the Complainant, in his prison, bravely and resolutely insisted upon having his complaints tried by a General Court Martial, the serjeant-major came to the Complainant, while he remaned imprisoned by order of the Regimental Court Martial, and paid him some money, in hopes of discharging the complaint of the non-payment of utensil-money, in Article the fiveth.

Here then, is another confession of injustice and guilt, which proves the justice and necessity of the complaints, and must alone have made the appeal *far from vexatious and groundless*, had not this article been thus artfully suppressed, which could onely, in all probability, be done by a court, which considered themselves bound by no oath: For, had they been sworn, indifferently and fairly to try and to do strict, equal justice, between the foldier and the commanding officer; it cannot be supposed, that any part of the complaint could be suppressed, or the dutiful, honest and brave foldier punished with imprisonment, merely for complaining; in due course of law and subordination.

Thus, it appears to me, that the whole number of articles exhibited in BLAKENEY's complaint, was not brought fully and fairly before the General Court Martial. And yet, though several of the articles were thus suppressed,

the court is forced to confess part of the charge, "*a grievance*, as the cloathing was ascertained by his Majesty's order and thought sufficient, and therefore the buff-colored waist-coat, unnecessary."—Therefore the pronouncing the complaints *vexatious and groundless*, became a superlative additional *grievance*, repugnant to the letter of the military law, and to every principle of common law and justice: For, while any part of the complaint was confessed to be true and well founded, the appeal could not justly be said to be *vexatious or groundless*, consequently, the censure must be arbitrary and illegal.

But BLAKENEY's complaints were not confined to the articles of this charge, though they had been fully allowed to come before the General Court Martial, as they were not; for, this court refused to take cognisance of the articles relative to paying for the carriage of his pay, and to the utensil-money, or of the charge of obliterating these articles out of the complaints, tried before the Regimental Court Martial; because part of these demands were allowed to be paid, the one, by the adjutant, the other, by the serjeant-major; and these sham and incomplete, and *ex post facto* payments were pleaded and allowed in bar to these articles, though large arrears appeared due upon these heads.

The most material of BLAKENEY's complaints, as the most distressful and intollerable, was his imprisonment by order of the Regimental Court Martial. This, therefore, was one of the great and primary objects of his appeal.—When this was apprehended by his officers, he was set at liberty, sometime before the General Court Martial was appointed or sat, not out of any compunction or mercy of this court, that by any means appears, but on purpose to elude the imprisonment's being made an article in his appeal.

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And we find, this had the like effect with the *ex post facto* payments : For, this imprisonment was not permitted to be entered among the charges, or in any sort inquired into, or even to appear in the notes or minutes of the court, as I am informed ; it being alleged, that the Complaint was released or discharged from his imprisonment, before the General Court Martial sat, and this release was insisted on and judged by the court to be a sufficient bar against every attempt to introduce or plead the charge of imprisonment, or to the making any inquiry relative thereto : And the reason was undoubtedly, equally just with those for suppressing the articles, obliterated by the Regimental Court Martial ; because part of the demands were paid after the complaints were made and proved. How far this is consonant to any principle of law, justice or common sense, I venture to submit to the cool consideration of the dispassionate and disinterested.

Thus, was BLAKENEY deprived of his unquestionable right of bringing his appeal from the judgment of the Regimental Court Martial, that imprisoned him, to the General Court Martial, before whom every article of his complaints, exhibited or offered, in the former court, together with his greatest grievance, his imprisonment, by order of that court, should undoubtedly have been brought and fairly and justly examined and judged.

No wonder then, if these material articles were permitted to be thus suppressed, and denied the just adjudication in appeal, that BLAKENEY's complaints should be found *groundless and vexatious*. But, unfortunately for his judges, they have themselves, in their sentence, confessed *one* article to be a *grievance*. Add these suppressed charges, which, as I am well informed, are on all hands allowed incontestably true, and see how many more *grievances* must be made out. Then, reflect how far the complaints appear from being *groundless or vexatious*, and how just the penalties imposed or ordered to be inflicted must appear.

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When by the suppression of these articles of the complaint, such confusion and discord is made in the numbers of the articles exhibited, and those alluded to in the sentence, it is not easy to point out precisely the articles referred to in the sentence, as they are not explained; which runs thus: " At a General Court Martial held upon an appeal from the determination of a Regimental Court Martial, held at *Chaptel-Izod*, by the officers of the Royal Regiment of *Irish* Artillery, and upon certain articles of complaint, signed by DAVID BLAKENEY, taking the matter before into consideration, did find, that with respect to the seventh article of the charge, the stoppage made from the Complainant, on the said article, was a grievance, as being unnecessary, the cloathing of the Royal Regiment of Artillery, being ascertained by his Majesty, and thought to be sufficient. But, as the Complainant received a buff waist-coat in *June* last, without, at that time of receiving it, making any objection, and has worn it and had it in his possession constantly since, the court were of opinion, that full value for the stoppage made from his pay to answer for the waist-coat, was given, and therefore awarded him no other redress. That with respect of the eighth article, the court were of opinion, that it was no grievance, as the lieutenant colonel was fully justifiable in having ordered a small plain hat to wear on fatiguing duty, in order to save the regimental laced hat, and the court were still more confirmed in that opinion, by the King's order fixing the cloathing of this regiment with respect to hats. That with respect of the tenth article, the court were of opinion, that the Complainant might and ought to pay obedience to a regimental order, produced by the lieutenant colonel, to have brought his old coat to be inspected. and if found bad, to have been converted into a frock, and therefore were of opinion, that the tenth article was no grievance. That with respect to the first, second, third, fourth, sixth, ninth, eleventh and twelveth articles, the court were of opinion, that the appeal on the said articles was vexatious and groundless and malicious, in breach of the twelveth section of the articles of

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war. It also having appeared, that the said DAVID BLAKENEY was a seditious and litigious man, the court therefore adjudged, that he should receive five hundred lashes at the head of the garrison of *Dublin, &c.*" Here, it is observable, that the thirteenth article, respecting false musters, &c. appears to be suppressed, as shall be shewn hereafter.

Now, let us take a cursory view of the propriety, justice and judgement of this sentence : It begins, for regularity, with the seventh article, which corresponds with the ninth in the complaint, the supernumerary, unnecessary buff-waistcoat, which is confessed to be a grievance ; but attempted to be construed away, by value given. So that by this, we are to understand, that a commanding officer may oblige the foldiers, to wear whatever cloathing he thinks fit, and stop payment out of their subsistence, contrary to his majesty's express order, and the act of parliament ; upon a presumption that value is given. Admirable judgment !

The eighth article corresponds in the complaint and sentence. By this, we are to understand, that it is no grievance to oblige the men to buy a fourth hat, while they have confessedly three other hats fit for use. What order of his majesty can be produced to justify this ?

The tenth article likewise corresponds in both complaint and sentence. And here we learn, that though charging and stopping eight shillings for a waist-coat was a grievance ; charging and stopping twenty shillings and nine pence for a frock, when he had a suit of cloaths on his back, and new cloaths in the stores, was no grievance. The former was declared a grievance, because it was unnecessary, and this is pronounced no grievance, though it plainly appears equally unnecessary.

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As if tired with marching through the difficult defiles of these three articles, the gentlemen make short work with the 1st, 2d, 3d, 4th, 6th, 9th, 11th, and 12th articles, without entering into the merits of one of them, or so much as explaining what they allude to in the sentence, they are disposed of by wholesale, or in the lump; they are declared *vexatious* and *groundless*. But, it is not judged enough to punish him, as if he had not proved one article of his charge, agreeable to the 12th section of the articles of war, of which he is said to have committed a breach; but the person complaining against his officer, is considered in a different light from a complainant under that section, and arraigned without any evidence, for crimes, which came not before this tribunal: This complaint is said to be *malicious*, and he is arraigned as a *sedition* and *litigious* man, and *therefore* adjudged to receive five hundred lashes, &c.

It now appears, that several material articles of BLAKENEY's complaint have been suppressed, and not suffered to be brought under consideration, or even to be fully explained, in the general Court Martial. And all the articles, that remained unanswered or unanswerable, are declared in gross to be *vexatious*, and *groundless*, and *malicious*, and in breach of the 12th section of the articles of war.

It must, indeed, be confessed, they were *vexatious*, and put gentlemen out of temper. But the whole number of articles in his complaint, must have been *vexatious* and *groundless*, to make them liable to any censure. Several of them, besides those that were suppressed, are proved *well grounded*; and incontestable proof of all the rest, has been, and now is, ready to be offered. Therefore, they are neither *groundless* nor *malicious*; much less are they a *breach* of the 12th section of the articles of war. Such a breach can only be made by officers, and those of the higher rank: This section provides a remedy for any inferior

ferior officer or soldier, who thinks himself wronged by his colonel or captain. It points out where the injured is to complain; gives him a title to a trial by a Regimental Court Martial, with power to either party to appeal to a General Court Martial. And provides, that if upon the second hearing, the appeal shall appear to be *vexatious* and *groundless*, the appellant shall be punished at the discretion of the said General Court Martial.

This is the substance of the 12th section of those articles, of which BLAKENEY is charged with committing a breach. The colonel, commanding officer or court may possibly commit a breach of this law; but I am not military enough to conceive how a soldier or matross, can commit a breach of this article, by complaining and appealing fairly and regularly; and least of all, can I see how BLAKENEY, for fulfilling the letter of the law, in complaining to his superior officer, upon failure of redress there, in demanding a trial by a Regimental Court Martial, and then in bringing an appeal to a General Court Martial, can, with any degree of truth or propriety, be said to have committed *such a breach*. Let the court acquit themselves of a violation of this law, if they can. I should be glad, for the honor of Courts Martial, to see them acquitted.

Let us now inquire a little into that remarkable part of the sentence, wherein the complaint is said to be *malicious*.—A matross, in due course and form of military law, complains of certain grievances to his superior officer. Upon obtaining no redress of demonstrable, indeed, self-evident grievances, he dutifully and legally demands a trial by a Regimental Court Martial. Upon this court's being so far from giving redress, that they aggravate and accumulate the complained of grievances, by an intolerable and unprecedented imprisonment; an appeal to a General Court Martial is made, agreeable to the spirit, as well as to the letter of the law. And while parts of
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this complaint appear proved by *ex post facto* payments, and consequent obliterations, and some are actually confessed a *grievance*, the rest, though equally probable, and, as far as permitted, proved or admitted, are declared and adjudged *malicious*.—Why *malicious*?—Can complaining lawfully and truly of grievances and oppressions, for redress onely, be deemed, in any sense or degree, *malicious*? If so, pray by what construction of the common or military law?—By none within my knowledge or conception: For, by every principle of justice, by every system of law, to me known, the aggrieved, or those who but apprehend themselves aggrieved or wronged, have a right to complain, and, by all peaceable and just means, to seek or sue for redress.—What more has BLAKENEY done? And why should his legal suit to obtain right, or the redress of grievances and wrongs, if they were but ideal, instead of real, be reckoned *malicious*?—This, I own, surpasses my conception.

But, this is not the onely hardship, imposed by this singular sentence: For, while, under the 12th section of the articles of war, the appellant is onely liable to the censure of the General Court Martial, upon his complaints appearing *vexatious* and *groundless*; here, the complaint gets a new aggravating epithet, that of *malicious*; the complainant is charged with a breach of the article of war, which, we have already shewn, he neither did nor could commit; and new crimes are charged upon him, of which this court had no cognisance; for, it is said in the sentence, that he appeared a *sedition* and *litigious* man, and *therefore* is censured.

Now, with all due deference to this soveregne court, I beg leave to contend, that the onely point before them was whether BLAKENEY's commanding officer, not BLAKENEY, was guilty or not, and whether BLAKENEY's complaints in appeal, were well or ill founded. If any article of the charge was proved, they were bound, in law

law and justice, to find the commanding officer guilty. They tacitly or indirectly acknowledge several, and expressly confess some of the charges well founded and grievous. Of these, surely, the officer was guilty, and they could not therefore be adjudged *vexatious* and *groundless* in the complainant. If any crime appeared in the appellant, it could not be cognisable in a court, appointed onely to try the truth of his appeal. For such a crime, another court should have been appointed, where the officers composing this court, might appear as witnesses, not as judges.

But, regardless of these, which are the principles of every law, the appellant was made the respondent. He who was, in law and fact, the prosecutor, became the prosecuted. Instead of being admitted to go into the proofs of his charges, charges were made against him, and while he was prosecuted for imputed guilt, he was not permitted to take his defence. BLAKENEY, the appellant was soon converted into BLAKENEY the *culprit*. His very name, as well as his character and station were changed. He was spoken of by some of his judges, with great confidence, not onely as a *seditious* and *litigious* man, but as a *deserter* from the *British* regiment of artillery. He was frequently, and confidently, and publicly called, *Cunningham*, and a *Deserter*; and as such, he was treated: For, when he was thus accused, it became necessary for the *late appellant*, BLAKENEY, now made and considered as a *Culprit*, and called, *Cunningham*, to take his defence. No evidence, it is true, were called to these new accusations; nor, indeed, was any evidence necessary; for, the charges were readily taken for granted. In vane therefore, did this innocent *late appellant*, by military force, I cannot say by what law, transformed into a *criminal*, and misnamed; in vane did he plead his innocence, and offer to call persons to his character, as a soldier and as a man, and to prove where he was born and bred, and that he never was out of this kingdom: Such an appeal was reckoned not less audacious or criminal than the first, and there-

therefore, aggrieved, innocent *Irish* BLAKENEY the *appellant*, thus transformed into *Cunningham*, a *malicious, seditious, litigious English deserter*, was denied the ordinary means of justification, allowed to criminals of the deepest dye; and, in the court, in which he sued for redress of grievances, sentenced to receive five hundred lashes! It is not necessary to comment on this proceeding; let it but be examined by the principles or modes of trial of the common, or even of the military law, and I shall submit it to the cool judgment of any disinterested and unprejudiced gentleman of the army.

But, we must not overlook the thirteenth article of BLAKENEY's charge, though suppressed, as it must probably be upon this, the censure of *malicious* is founded.

This charge relates to false musters and to soldiers being suffered to neglect their duty, and to become servants and wear liveries. Let us first see how the law stands against these abuses.

By the mutiny act, before recited, sect. XIII, "Any person making or giving, or procuring to be made or given, any false or untrue certificates, whereby to excuse any soldier for his absence from any muster or any other service, upon pretence of being employed on any other duty, or of sickness, &c. shall, for such offence, forfeit fifty pounds, and be forthwith cashiered and disabled from further service, &c." And—"All commissaries are ordered to set down on the roll the time of making the muster, the reason of absence, and by whom certified." And, by sect. XIV, "Every officer, who shall make any false or untrue muster of man or horse, and every commissary, muster-master, or other officer, who shall wittingly or willingly sign such false muster-roll, or who shall take any money for mustering or signing such muster-roll, shall be cashiered and disqualified from holding any office civil or military." And, by sect. XVI, to prevent such abuses, "Every commissary or
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muster-master is obliged to give notice to the chief magistrate of the place, of every intended muster, in order that such magistrate may be present at such muster, to prevent such frauds, and certify the truth, by signing the rolls, under the penalty of fifty pounds, &c.

By sect. XIX, " persons falsely mustered or offering themselves to be mustered, to be committed to the house of correction by magistrates of cities or justices of the peace of counties." And,

By sect. XIX, " The commissary or muster-master is to swear to the truth of his musters, before the attending magistrate or justice of the peace, and to enter and subscribe such oath upon the back of the roll:" And by the Articles of War, Sect. IV. Art. VII. " Any officer, who shall presume to muster any person as a soldier, who is accustomed, at other times to wear a livery, or does not actually do his duty, as a soldier, shall be deemed guilty of having made a false muster, and shall suffer accordingly."

How far this just and useful part of this law is complied with, let officers of the army and magistrates declare. How far the articles of war were attended to, in this case, will immediately appear.

The thirteenth article of BLAKENEY's complaint points out several abuses of musters in violation of this law and this article. Incapable boys, livery servants and footmen mustered, to the number of twenty-five, in that small but expensive corps, which, besides the general injury to the public and to the service, is a particular grievance to the men, who are forced to do the duty of those mustered footmen and boys.

I am well informed, that though the Lieutenant Colonel confessed this charge, that the court disallowed it.
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And so it appears by their sentence, in which no mention is made of it. The charge must assuredly be true or false. If true, it is easy to point out, where the penalty should fall. If false, it should have been so proved, and then and not till then, the appellant censured for a *vexatious and groundless* complaint. Who has a proper regard to the honor of the Court Martial, that does not wish this had been done?

But, upon a revise of the minutes of a gentleman of credit, who attended the trial, this thirteenth article in **BLAKENEY's** charge is found comprised under the twelfth article of the sentence. And here, it may be proper to point out the answers given in court to each individual charge, by which the judgment and justice of the sentence will appear in the true light.

I. To the first, the Lieutenant Colonel admitted the deduction was true; but said it was made by order of government. No such order however was produced. But the Colonel's testimony was taken. And sure it will be confessed new, in courts of justice, to admit persons accused, to acquit themselves upon their own oaths: and yet this was permitted throughout this trial.

II. The second charge was admitted. But in answer, it was said, that no recruit was intituled to new cloaths. To this, the court however objected. And since, it has come out, that, between the Adjutant, Quarter-Master and Serjeant-Major, several suits of cloaths were lost, in the place of which, they furnished the recruits with such old, cast cloaths, as might be bought.

III. The third charge was also admitted. But the stoppage was alleged to be done by order of the board of ordnance, who ordered half the half-mounting money to be kept from every Recruit, and that he should not get even that half, until he should be a year in the service.

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IV. The fourth charge was admitted. But alleged, that the utensil money was drawn from the board onely once in two years. Though it was proved by evidence, and afterwards admitted, that the regiment was paid this money in 1766, and again, when the complainant was imprisoned by the Regimental Court Martial.

V. The fiveth charge was admitted. But alleged to have been done by order of the Marquis of *Kildare*, the late Colonel.

VI. The sixth charge was admitted. But alleged to have been done by order of the marquis of *Kildare*, the late colonel.

VII. The seventh charge was admitted. But alleged to be at the desire of the men; of which no proof was offered, and the contrary, it is said, can be proved. However, it was given up by the complainant.

VIII. The eighth charge was admitted. But alleged to be done to save the laced hats of the men, in practice; while it was proved, that they had, each in his custody and use, one laced and one plane hat, and were intituled to a new hat, kept from them in the stores.

IX. The nineth charge was admitted, and confessed to have been done by the lieutenant colonel's orders, for the better appearance of the men.—Yet quite regardless of his majesty's cloathing order, as is declared in the sentence.

X. The tenth charge was admitted. But alleged to have been done by the choice of the majority of the private men of the regiment; though the reverse was proved by the evidence, produced at the trial.

XI. The eleventh charge was admitted. But asserted, that it was for the good of the service.

XII. The twelveth charge, which should have been the thirteenth, was admitted. But the reasons assigned were, that one of the boys was the son of one of the officers, and that upon some alterations, expected to take place in the regiment, it was intended to purchase an half-pay commission for him. And as for the servants, they were enlisted and attested, learned their exercise, and occasionally mounted guard, with their masters. Although, it was proved that several of them wore liveries, contrary to the law, and never did the duty of soldiers, and that others had done no duty for three years. See articles of war, sect. IV, art. VII, before recited, p. 31.

The twelveth charge, which should have taken place of the preceding, and made that the thirteenth, is the deduction for the carriage of the pay to *Cbappel-Izod*, which is admitted by having been paid him, when imprisoned by the Regimental Court Martial, and has since been verified by the testimony of the adjutant, before a committee in the house of commons.

Thus stands the justice of the sentence, which declares the complaint, *vexatious* and *groundless*, and *malicious*, and the complainant, *seditionous* and *litigious*, and *worthy of bonds and of stripes!*—Is this discipline? Is this the way to make good soldiers? Is this lawful? Is it wise? Is it politic? Is it just?—I appeal to all the cool, dispassionate, and disinterested gentlemen of the army. And, I appeal to the legislature, whether it be not high time to interpose and regulate the trials of military men.

However unjust and rigorous it may now appear, to punish a man with imprisonment and five hundred lashes of knotted whip-cord, merely for making the complaints of himself and his fellows known, and for suing for redress
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in the proper courts, by due course of military laws; the sentence might have been executed, in it's utmost latitude, unobserved and unnoticed, had not the most provoking and unheard of severities been shewn, preparatory to, and at the time of the execution.

When the prosecuted, let me not say persecuted, prosecutor, so far from obtaining redress from the officer, who was forced to admit the truth of the several charges in the complaint against him, was thus censured and sentenced to punishment, he was sent to prison, and there confined, until his sentence was approved and confirmed.

Upon the day appointed for the execution, a guard was sent to conduct him, in iron manacles, from the prison to the place of execution, at the barracks. The unfortunate sufferer expostulated with the officer upon disgracing a soldier, who never did any thing contrary to law, with marching him loaded with irons, like a thief or a robber, to execution; declared his willing submission to suffer agreeable to the sentence, and his resolution to go peaceably, under the conduct of the weakest drummer in the corps.

This officer had humanity enough to be touched with such remonstrances and declarations, and therefore led the sufferer to the place of execution, without the manacles, which were onely carried with the guard; for which the humane and generous officer was blamed and reprimanded. But, he bravely exonerated himself, by producing the supposed criminal, agreeable to law.

But, the poor matross, had no sooner reached the place of execution, than he was assailed with cruel scoffs and insolent and wanton abuse. Such as, " Oh, ho, Mr. BLAKENEY, have we got you?—You have escaped the gallows, but d—— me if you shall escape us: You villain, we will have your blood."—Another says, " d—— ye,

you scoundrel, you shall now pay for all your impudence and villainy.”—“ Come you dog,” says a third, “ strip, strip, G—d——n you, strip,” and so lays hold on his cloaths, to drag them off.

How oft have we seen a poor, quiet, tame, inoffensive Bull, drove easily to market, rudely attacked and hallooed and goaded into madness?—Oppression makes a wise man mad.—No wonder then, this poor unhappy wretch was drove into that fit of distraction, which precipitated him into the rash and violent act of suicide, which in his cool moments, he has lamented, and condemned his rashness, in terms of the deepest penitence and most sincere shame and remorse.

I am well informed, he had no knife about him, but borrowed one from one of the soldiers, to cut some string that held his shabby garments together. In this instant, galled and fretted with unmerited abuse and severity, the frantic fit seized him, and he plunged the knife several times into his belly, and threw it to the most cruel and insolent of his tormentors.

That *merciful* gentleman dragged up the poor wretch's shirt, heaped imprecations and abuses upon him; called him villain and scoundrel, and said, if he was not a coward, he would take up the knife and finish himself. Swore he should not escape in this manner, and ordered him to be tucked up and whipped.

But here, the mercy of his colonel was called forth. He prevented the whipping, till the surgeon should see and examine the wounds, and report the execution not dangerous. Upon which, loaded with more imprecations and abuse, for disappointing some gentlemen of the expected entertainment, he was sent to the infirmary.

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These proceedings require no commentary to expole them in the proper light. But the manner of the trial itself deserves and requires to be explained.

By every principle of our laws, delinquents are to be tried by impartial and indifferent judges, upon the verdict of their equals, of the neighbourhood, sworn to do justice with truth and indifference. It has been found necessary to put military men upon a different footing, by subjecting the soldiers to be tried by their officers. But, it cannot be doubted, that those invariable principles, demand the closest attention possible, from military, as well as other courts: For, since soldiers may not, by the martial laws, have the benefit of trials by juries, the officers appointed to judge their causes, ought to be as far removed, as possible, from all grounds of suspicion, of prejudice or partiality: Ought to be quite indifferent.

Our laws wisely provide, that no man of law shall go judge of assize in his own county. From this principle, officers should not be left the sole judges of the men in their own regiment. But, as it became necessary to give Regimental Courts Martial this jurisdiction, the legislature wisely provided an appeal to the officers of another corps, which must be supposed more impartial and more indifferent, than those immediately concerned, as affections and prejudices may be naturally and insensibly conceived by the best of men.

Yet, little or no attention was paid to these principles, in the present case: BLAKENEY, according to law, complained to his officers, and obtaining no redress of his grievances; he desired to have them submitted to a Regimental Court Martial. A Regimental Court Martial after some time was held. But this court was not sworn, consequently should have no legal jurisdiction, further than as a court of inquiry. And if the jurisdiction of this court was thus rendered defective, that of the subsequent court,

could not in my apprehension have been legal. The Regimental Court Martial however, instead of redressing grievances, aggravated them by an unexpected, and it must be supposed, undeserved, if not illegal imprisonment.

From this determination, so contrary to what he had a right to expect, he naturally and justly appealed to a General Court Martial. A General Court Martial was accordingly appointed. And this should undoubtedly have been composed of officers, who had no sort of concern or connection with those, who passed the former sentence. It cannot be imagined, with any degree of justice or propriety, that any of the corps of officers, who lately tried and condemned him, in the Regimental Court Martial, should have been appointed to try his complaints again, upon an appeal from their own jurisdiction, to that of a General Court Martial, a court, in which the *majority of voices* is to determine.

Yet, such was the unfortunate BLAKENEY's case! No less than four of the officers of his own regiment, in which a Court Martial had already condemned and imprisoned him, were appointed of the court, to which he now appealed. And one of these, it was, who afterwards charged BLAKENEY with being an *English deserter*, and called him *Cunningham*; and it will appear, that this officer was no better qualified to give evidence, than judgment, in this Cause.

The appointing officers of his own regiment, upon this trial was justly objected to, by the complainant, but to no effect; and notwithstanding the admission of the charges, with particular constructions, as before related, the prosecutor was forced to take the place of the prosecuted; and, instead of receiving redress, or calling the person complained of to account, even for the *confessed grievance*, the unfortunate complainant was sentenced to receive the severest

severest and most ignominious punishment, a man can survive, five hundred lashes of a cat of nine tails!

There was also a circumstance attended the General Court Martial, which would have had a different effect in a court of law, from what appeared in that court: The president, a man distinguished no less for his humanity, benevolence and charity, and for his love and tenderness for the soldiers, than for his valor and attention to discipline, and a strict regard to justice and honor, unfortunately died suddenly, just as the evidence on all sides was closed.

Such an accident as this, would, I apprehend, stop all proceedings in a court of law. But, it had no such effect on this military court: For, as I am informed, a new president was appointed, who was not before a member of the court, and with this new and uninstructed president, the court proceeded to the judgment and sentence, which has been before related, without any further examination of the matter.

Who can know these things, and, consistent with the love and duty he owes his king and country, decline to demand justice and reformation? Is it not enough, that soldiers should be made subject to martial laws, which in some measure, necessarily deprives them of the benefits of the common law? Are they therefore to be considered as slaves, cut off from the ordinary protection of the laws? Are they to be deprived of the benefits of the very laws, provided for their discipline and security? If they live up to the tenor of these laws, are they not meritorious, and do they not deserve protection and favor from the state? Are their liberties, properties and lives, not be secured and protected, as well as those of other subjects? Is it not enough, that above half the pay of every private man, allowed for cloathing, besides the whole pay and subsistence, and cloathing of several nominal, or fictitious

men, as well as those of an hautboy for every troop of dragoons, are sunk in the pockets of the respective colonels; but that the men shall be mulct and put under stoppages for such supernumerary or additional cloathing, as the colonel shall think fit? And are the men to be buffeted, beaten, insulted, abused, imprisoned and whipped, for complaining and suing for redress, by due course of law? Have not the chief of BLAKENEY's complaints been confessed? Does not the court confess one article of the charge to be a grievance? Have not some of the most material been proved before a committee of the house of commons? Have not government been properly affected by those complaints? And are there not accordingly orders issued to put a general stop to the late unjust deductions and stoppages of the pay and subsistence of the private men in the army? And yet, is the man, who brought these complaints to light, to be punished with stripes and with bonds? Is he a criminal? Is he not rather to be considered as a martyr for the rights of the army?

I now beg leave to explaine my conduct, and the motives of my conduct, upon this occasion.—Shocked with the story of the distresses of the man, though an intire stranger to me, I could not be at peace, till I saw him and learned the circumstances of his affecting case. And yet, before I presumed to take a step for his relief, I collected evidence to convince me of the truth of the information, I had received.

Considering it a delicate point, to call the judgement of any court in question; I thought it best to lay this poor man's case before government, in the affecting terms it appeared to me to demand, as far as time and circumstances would permit, that by proving the poor man to be an object of mercy, his sentence might be respited, till time should convince gentlemen of their error, and prevent the like for the future.

And

And had I not then thought such an application, at once, justice to the poor condemned man, a favor to the Court Martial, and the highest respect, I could pay to government, whose brightest attribute is mercy; I should have taken, by the shortest method possible, the course I now find myself disagreeably forced to take. My solicitude to obtain mercy to this poor man, from these several motives, urged me to get myself carried, in a painful and decrepit state, to make this application.

I am not accustomed to ask favors of the great. My pride has ever kept me in the number of those few, who, for themselves, have nothing to ask and nothing to fear. And I would not give up this happy state of independence, for the first place or fortune in the kingdom.

Yet, I flatter myself, my conduct towards government has ever been, as I hope, it ever shall be, clear of reproach. And I can go further and challenge the best paid ministers of the crown, to point out a single instance, since I have been honored with a seat in parlement, where they have wanted my feeble aid, when they were in the right, in or out of parlement.

Such a disinterested friend and servant of government might be reckoned intitled to ask for some few favors. But, I never stooped to ask any, that I did not judge it the interest and honor of the crown to grant. I say *stoop*, though this word has been objected to: As legislators, all parts of the legislature may be reckoned upon a par. And when one part asks a favor of another, that part, in my estimation, *stoops*.

However, though my solicitation was not attended with that success, which applications of the like kind for criminals have often met; I cannot be ashamed of having made it, as the purposes were just and merciful, to more than the mere object, for whom it was more immediately made.

There

There is no gem that adorns the imperial diadem of our sovereign, equal in brightness and lustre to that god-like attribute, Mercy. Our Law is the Law of Mercy, as appears by one of its invariable axioms, *it is better ninety-nine criminals should escape justice, than one innocent man suffer wrongfully*. Therefore, the shewing an act of mercy to this unfortunate man, if not an actual pardon, a respite of his severe sentence, till matters might be a little further explained, must have produced some good, and could be attended with no bad effects. It might and probably would have made all further inquiry into these remarkable transactions, as well as this explanation, unnecessary.

But unfortunately, I was not found of weight enough in the balance, to procure any act of mercy, any pardon, any mitigation, any respite of the sentence passed upon this ill-fated man. And my applying for it, served onely to precipitate the execution of the unfortunate victim, doubly unfortunate in finding no better an advocate: For, my application produced no better an effect, than a consultation of surgeons to determine whether the victim was or was not able to bear the destined punishment.

This determined me, though in an hasty and imperfect manner, to lay this poor man's case before the House of Commons, and to move for an address to his Excellency the Lord Lieutenant, to request he would give orders to suspend the execution of the sentence of the General Court Martial on DAVID BLAKENEY, the Matros, until the inquiry into the state of the military establishment, then under consideration in the house, should be closed; being well assured, that the truth of BLAKENEY's complaints, must have come out in the course of that inquiry, as some of them afterwards did, in the few questions, that there happened to be time and opportunity to ask the adjutant of the Regiment of Artillery.

But in this application, it seems I was wrong, in manner or form, as the question was determined in the negative, by the majority.

This

This however did not discourage me from making another attempt to bring this matter to a further test. I therefore moved, that the proper officer should be ordered to lay before the house, the minutes, proceedings and sentences of the several Courts Martial, held upon DAVID BLAKENEY, at *Chappel-Izod*, and in the Castle of *Dublin*: And here again, I had the misfortune of finding myself in the wrong, in manner or form, by the determination of the majority. But this may be accounted for from a positive assertion, made by a gentleman of experience in military matters, that the sentenced soldier had a right to appeal to the King's Bench; though it has since appeared that he cannot, except in an action, *when the injury is done*.

Nothing now prevented the execution of the sentence upon BLAKENEY, but the report of the surgeons, which was, that his state of health made the execution dangerous to his life.

In the mean time, this unfortunate, brave soldier wrote me several letters, thanking me for my endeavors to obtain mercy for him, though they proved fruitless; begging I would be under no concern for him, nor put myself under any obligation to any great man for his pardon; saying he was assured of God's pardon, on his penitence for the rash and shameful act he committed in his passion; that he would be soon recovered of his wounds, and that he would be able to bear the destined punishment, like a soldier and a man.

I am well informed, that, during this time, many applications and offers were made to him by different persons, some of distinguished stations in life, who all pretended friendship for him, blamed him for taking my advice, as they unjustly termed my interposing for mercy, pressed him to be guided by them, and they would insure him, what I had not interest to obtain, his pardon.

He candidly acquitted me of being an adviser, thanked them for their friendly interposition, and asked, what they would have him do.

But

But, when, to his astonishment, he found, they offered no better terms, than his confessing himself in the wrong, and begging pardon of the officer or officers, against whom he complained; he treated those agents as masqued enemies, with the utmost contempt and indignation; said he would not, by any degree of falsehood, forfeit the favor of that honorable and humane gentleman, for their procuring him a full pardon; swore, he would not put his hand to a falsehood, to procure a thousand guineas in the place of every lash he was to receive, and that he would suffer his flesh to be whipped off, or torn from his bones, before he would certify a lie.

Are these the sentiments of a dastard slave? of a pitiful deserter? or of a self-convicted coward?—Or, is not this the language of innocence and virtue, of a brave, free, resolute and heroic soldier? Compare this with his deportment and conduct at his cruel execution and since, and thence determine the character of the ill-fated man!

Now, view him, after some violent wounds, and a tedious indisposition, and the necessary long confinement in an hospital, marched to the dreadful place of execution, where cruel scoffs, inhuman insolence and mean abuse had before drove him into madness, and to an act of suicide. What was his behavior under these trying circumstances?

His enemies are forced to confess, that he marched with matchless intrepidity and determined coolness and resolution. He stripped off his cloaths, as readily, as cheerfully as if he were but going to bed, and calmly and coolly and firmly yielded up his hands to be tied as high as was judged necessary for his more effectual torment.

The deputy executioners, after shewing how perfect their instruments of torture, how well prepared their mounted hanks of knotted whip-cord were, got their orders, each as slowly and deliberately and effectually as possible, to inflict the allotted number of lashes.

How did he bear this rigorous punishment? With fortitude that amazed his principal and deputy executioners. Not a moan, or even a sigh, was heard. Not a muscle
of

of his body winced. Not a line of his face was moved, except into smiles of contempt on his principal executioners, who protracted his pain as long as possible, and now and then threw out a worthy ejaculation, "D—n the villain, nothing will conquer him."

After making the execution thus as distressful, by delay, and as painful as possible, the brave tortured soldier, after being with difficulty rescued, by the humanity and judgment of the surgeon of the Artillery, from the barbarous, inhuman, exploded practice of pickling the mangled flesh with salt brine, as some of the Barrack surgeons advised; was forced to put on his cloaths, without getting any dressing for his lacerated carcass. He seemed as composed, as if he felt no pain. He desired to be taken to the infirmary. He was denied it. He then demanded it, as his right; said every soldier paid for supporting it, whether in sickness or in health; he therefore insisted upon it, as his right, and upon refusing to go to *Chappel-Izod*, and demanding his right to the infirmary, a right which cannot in justice, and much less in humanity, be denied, he was seized as a prisoner, and compelled to walk from the place of execution in *Dublin*, to the barrack at *Chappel-Izod*, with his skin and flesh cut, torn and mangled, and his body weltering in gore. Yet all this in no sort could dismay or damp the courage of this valiant, but unfortunate soldier.

Was this the deportment of a base slave? of a dastardly deserter, or conscience condemned coward? Was it not the inflexible fortitude and boundless valor, which bold truth, conscious innocence and innate virtue alone can inspire and support?

Yet all this was so far from moving the generous regard or compassion of those who superintended this execution, that they still insolently taunted him, with bidding him now send for his friend *Doctor Lucas*.

Doctor Lucas is neither afraid or ashamed of being a friend to the innocent and the distressed. He is not, cannot be, as is expected, offended at being so deemed, and
much

much less at being called by his name; while he, in compassion to those who shewed more savage barbarity, than attention to law, justice, judgement, humanity or mercy, in their treatment of this oppressed soldier, mentions not one of their names, wishing rather to devote them to perpetual oblivion, than to living infamy.

Let me now appeal to those, who are touched with any sense of the freedom and rights of the subject, whether civil or military, whose bosoms are actuated with sentiments of justice and humanity, whose bowels are moved to compassion and just resentment, by the sufferings of their fellow subject, or who wish to support the reputations of good citizens or men of honor, and request they will judge in what instances, in all these proceedings, my conduct is to be impeached.

I could not be at peace, when I was moved to look into and learn this man's severe sufferings, without seeking for mercy and redress of his wrongs.

I could have had no attachment to the individual, I could have had no prejudice in his favor; for, I knew him not. And my solicitude was to obtain mercy and redress of wrongs, for an innocent subject and a brave soldier, oppressed and friendless. I now call for justice and law, and for some proper security from the legislature, against such abuses of soldiers and men for the future.

I have no particular pique or prejudice to any gentleman of the army. I honor and esteem a body of gentlemen, appointed to defend their country from it's internal and external foes. I live, and hope always to live, in affection and amity with such worthy gentlemen of the army, as I know and am known to.

But when, and wherever, I have reason to judge their conduct wrong, I shall reserve to myself the rights of a free subject and a guardian of the people, and shall by all lawful, just and peaceful means, seek for the redress of wrongs and the security of the freedom and rights of my fellow subjects.

In this, I assure myself of the concurrence of the far greater number of the gentlemen of the army. And when they

they see, I act upon the principles of the old *Roman* citizen, who spared not his *own son*, when he appeared in the wrong; I doubt not they will rather applaud than condemn my conduct in this whole affair.

If our soldiers be not protected in the rights of men, if they may not with confidence and safety, in a dutiful manner, complain of grievances, and regularly obtain redress, if they are to be punished for complaining, they must be wretched slaves, indeed. And consequently, instead of a safeguard, they may prove the most dangerous enemies of the state. Let them therefore be kept to their duty, with just discipline; let them be properly clothed and paid, as the nation provides; and when they transgress, let them be tried, and acquitted or punished upon the principles of law, with justice, tempered with mercy. I ask no more.

Had this been done, in the particular case before us, **BLAKENEY**, if he might be found guilty, had suffered without murmur or noise. Or had I had weight enough to obtain mercy for him, the world had never heard the clamour raised, since my fruitless application.

But in all this, let it not be thought, that I presume to glance a reflection upon the conduct of the great and good man, who presides over us: No man pays more respect and duty to his station, no man more honors and reveres his authority, no man is more sensible of his affable, humane and benevolent character in private life, no man has a more just sense of the particular benefits conferred on this kingdom by his administration, or of the dignity, splendor and magnificence, with which he fills his high office, than I.

He, like the sacred person, he so truly and worthily represents, must act upon the information he receives. It cannot be supposed, that he knew all the circumstances of this poor man's case. He must form his judgement upon the sentence of the Court Martial, and the character given by the officers, of the supposed delinquent. Nor is it to be wondered, however to be lamented, that the remonstrances of a number of military gentlemen, to be presumed disinterested and impartial masters of the subject, should outweigh

weigh the solicitation of one civil person, however disinterested and impartial, hardly to be presumed, master of the subject, or a judge of military matters.

He could hardly have known more than was thus laid before him. His merciful disposition was before manifested, by his having remitted three hundred of the five hundred lashes, sentenced to be inflicted. And his just and general regard to the army was sufficiently proved, by his issuing orders, that the private men should suffer no more stoppages of their subsistence or pay, but such as were or should be authorised by law and his Majesty's express commands.

But, while I am thus willing and desirous to do justice to all, and to render unto *Cæsar*, the things that are *Cæsar's*; I hope, I shall not be denied the like judgement and justice to my own character, and to my conduct in this interesting affair.



F I N I S